

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**JOHN KLAR, and
MARCY KLAR**

Plaintiffs,

v.

Civil Action No. 3:13cv000462

SETERUS, INC.,

Defendant.

**DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE
PLAINTIFFS’ REPLY TO ANSWER TO COMPLAINT**

NOW COMES Defendant, Seterus, Inc. (“Seterus”), and pursuant to Rule 12(f), for its Memorandum in Support of Motion to Strike the Reply to Answer to Complaint filed by the Plaintiffs, John Klar and Marcy Klar (the “Plaintiffs”), and state as follows:

A. Standard of Review.

Rule 12(f) of the Federal Rules of Civil Procedure states that a “court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; on (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.” F.R.C.P. 12(f).

B. The Court should strike the Reply to Answer to Complaint.

On July 18, 2013, Seterus removed this case from the Chesterfield, Virginia Circuit Court. On August 5, 2013, Seterus filed a Motion to Dismiss (ECF 6) and Memorandum in Support of Motion to Dismiss (ECF 7). Also on August 5, 2013, Seterus filed an Answer to the Complaint (ECF 8). Rule 7(a) of the Federal Rules of Civil Procedure states:

(a) Pleadings. Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim ;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

This court has not ordered a reply to the Answer filed by Seterus. Further, at no time have the Plaintiffs sought leave of Court to file a Reply to the Answer of Seterus. The Plaintiffs' Reply to Answer to Complaint was improperly filed, and the Court should therefore strike it from the docket in accordance with Rule 7(a).

CONCLUSION

For the foregoing reasons, Seterus respectfully request that this Court grant its Motion to Strike Plaintiffs' Reply to Answer to Complaint from the docket. In the event the Court does not grant the Motion to Strike, Seterus seeks leave to file any necessary reply or rebuttal to the Reply to Answer to Complaint.

SETERUS, INC.

/s/ Terry C. Frank

By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2013, a true copy of the foregoing Memorandum in Support of Motion to Strike is being filed electronically with the Clerk of Court using the CM/ECF system, and mailed a copy to the following:

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